Supreme Court, U.S.
FILED
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No. 09-8

IN THE

Supreme Court of the United States

OLIVER W. & HARRIET S. WILLIAMS,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Introductory Statement:

The Petition For Writ Of Certiorari emanates from the Second Circuit Court Of Appeals' denial of the Petitioners/Appellants' Appeal and the denial of their Petition for Rehearing of United States Tax Court dismissal of their petition to vacate a tax lien filed against them by the Respondent/ Appellee.

The Tax Court action was instituted as a result of the Petitioners/Appellants' attempt to resolve their tax liability through the IRS Offer and Compromise procedure with Connie Westphal, the Respondent/ Appellee's assigned field officer. There is no dispute the Respondent/Appellee was empowered to file a lien any time payment is not made after demand. However, where, as here, the filing of the lien was conditioned by the field officer on the happening of an event that did not occur, the lien should not have been filed.

The Office of Taxpayer Advocacy investigated the Petitioners/Appellants' claim and concluded the field officer mis-represented the reason gave for filing the lien.

I. IS A TAXPAYER WHO ATTEMPTS TO RESOLVE A TAX LIABILITY WITH THE IRS ENTITLED TO ENFORCE AN AGREEMENT MADE WITH AN IRS EMPLOYEE OR REPRESENTATIVE OF THE IRS WHERE THE TAX PAYER HONORED THE TERMS OF THE AGREEMENT?

II. DID THE COURT OF APPEALS COMMIT REVERSIBLE ERROR BY SUSTAINING THE ORDERD OF THE TRIAL COURT HOLDING THE LIEN WAS PROPERLY FILED WHERE THE IRS FIELD OFFICER CONDITIONED THE FILING OF THE LIEN ON EVENTS THAT DID NOT OCCUR?

III. IS A PARTY TO AN ACTION ENTITILED TO EXAMINE AT TRIAL AN EMPLOYEE OR REPRESENTATIVE OF A GOVERNMENT AGENCY WHOES ACTS AND OMISSIONS FORMED THE BASIS OF THE LEGAL ACTION?

IV. DID THE APPEALS COURT COMMIT REVERSIBLE ERROR BY SUSTAINING THE ORDER OF THE TRIAL COURT PROHIBITING THE FIELD OFFICER FROM TESTIFYING AT TRIAL AND PERMITTING COUNSEL FOR RESPONDENT/APPELLEE TO TESTIFY AS TO THE TRANSACTIONS OF THE FIELD OFFICER?

COURT ORDERS AND OPINIONS

Court orders and opinions are contained in the Appendix.

JURISDICTIONAL STATEMENT

The Writ of Certiorari seeks review of a final Order of the Court of Appeals for the Second Circuit. Jurisdiction herein is conferred by Article 3, Section 1 of the United States Constitution.

A Summary Order denying Petitioners/Appellants' appeal was entered on November 10, 2008. Petitioners/Appellants' Petition for Rehearing was denied and the Order was entered on January 26, 2009.

Appellate jurisdiction was conferred by 28 U.S.C.A. § 1291, the appeal of a final order disposing of all claims of the parties in the United States Tax Court. The Order of the Tax Court denied Petitioners/Appellants' Petition and was entered on June 22, 2007. Petitioners/Appellants' Notice of Appeal was timely filed in the Tax Court on September 18, 2007, and the required fee was timely paid.

Jurisdiction of the lower court was conferred by the United States Tax Code, providing for trial de novo of an adverse decision of an IRS Appeals and Review Officer.

The issues presented herein are of substantial public interest and importance.

CONSTITUTIONAL AND STATUTORY PROVISIONS

5TH Amendment to the United States Constitution and 42 U.S.C.A. § 1983.

STATEMENT OF THE CASE

The Petition For Writ Of Certiorari emanates from the Second Circuit Court Of Appeals' denial of the Petitioners/Appellants' Appeal and the denial of their Petition for Rehearing of United States Tax Court dismissal of their petition to vacate a tax lien filed against them by the Respondent/ Appellee.

The Tax Court action was instituted as a result of the Petitioners/Appellants' attempt to resolve their tax liability through the IRS Offer and Compromise procedure with Connie Westphal, the Respondent/ Appellee's assigned Field Officer. There is no dispute the Respondent/Appellee is empowered to file a lien any time payment was not made after demand. However, where, as here, the filing of the lien was conditioned by the Field Officer on the happening of an event that did not occur, the lien should not have been filed.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR BY SUSTAINING THE ORDERED OF THE TRIAL COURT HOLDING THE LIEN WAS PROPERLY FILED WHERE THE IRS FIELD OFFICER CONDITIONED THE FILING OF THE LIEN ON EVENTS THAT DID NOT OCCUR

The Field Officer provided the terms in which a lien would be filed in her letter of November 30, 2004 (Record (R) of Appeals Court, Exhibit "9J") to Petitioners/ Appellants. She conditioned the filing of the lien on the Petitioners/Appellants' failure to timely respond to any of her requests for information. According to the Field Officer, a failure to timely comply would result in the return of the offer and compromise application and the filing of a lien. The Appellants/Petitioners timely provided all information requested. The Field Officer completed her evaluation of the Petitioners/Appellants' offer and compromise application and then authorized the filing of the lien. R, Trial Transcript Testimony of Oliver W. Williams.

The Tax Payer Advocate's Office accepted Petitioners/Appellants' complaint against the Field Officer and conducted an investigation. It reviewed the Field Officer's complete file on the offer and compromise application. Contrary to the Field Officer's verbal assertion to The Tax Payer Advocate that the application was rejected, and the lien filed, due to the Petitioners/Appellants' failure to provide her with Appellant's, Harriet S. Williams', pay stub to verify the

taxes she paid. The Tax Payer Advocate's review of the file did not find any notation of such a request, and the Petitioners/Appellants denied such a request was made (R, Exhibit "18J", findings of the Tax Payer Advocate's Office, and R. Trial Transcript Testimony of Oliver W. Williams). The Respondent/Appellee has not provided evidence to the contrary.

II. THE APPEALS COURT COMMITTED REVERSIBLE ERROR BY SUSTAINING THE ORDER OF THE TRIAL COURT PROHIBITING THE FIELD OFFICER FROM TESTIFYING AT TRIAL AND PERMITTING COUNSEL FOR RESPONDENT/APPELLEE TO TESTIFY AS TO THE TRANSACTIONS OF THE FIELD OFFICER

The trial court committed reversible error in granting the Respondent/Appellee's motion in limine quashing Petitioners/Appellants' subpoena ad testificandum served on the Field Officer. Nonetheless, the trial court permitted counsel for Respondent/Appellee to testify as to the actions taken by the Field Officer based upon documents obtained from the IRS computer file, and likewise permitted testimony by the appeals and review officer on documents generated by the Field Officer, though the documents were not produced in court. R, and R, Trial Transcript Testimony of Thomas Knauss, Appeals and Review Officer.

The testimony by counsel for Respondent/Appellee and by the Appeals and Review Officer resulted in a waiver of any exemption the Field Officer may have had from testifying in court.

The testimony of the Field Officer was crucial to the Petitioners/Appellants' prosecution of their case, and the Trial Court's refusal to allow the testimony was a denial of the Petitioners/Appellants due process rights.

WHEREFORE, the Court of Appeals for the Second Circuit should be reversed, and the lien should be vacated.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION AND ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DATED AND FILED NOVEMBER 10, 2008

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 07-4173-ag

OLIVER W. WILLIAMS, HARRIET S. WILLIAMS,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PRESENT: JOSÉ A. CABRANES, PETER W. HALL, Circuit Judges, and JOHN GLEESON,* District Judge.

SUMMARY ORDER

Petitioners, Oliver W. Williams and Harriet S. Williams, proceeding *pro se*, appeal from a June 25, 2007 decision of the United States Tax Court, affirming the filing of a notice of a federal tax lien by the Internal Revenue Service ("IRS") Office of Appeals. Before this

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* The Honorable John Gleeson, of the United States District Court for the Eastern District of New York, sitting by designation.

Court, petitioners do not contest their underlying tax liability. Rather, they argue that the Tax Court erred in (1) quashing a subpoena ad testificandum that they served on the field officer responsible for filing their lien, (2) permitting counsel for the Commissioner to testify as to the actions of the same field officer, (3) failing to vacate the lien because, in petitioners' view, the Commissioner failed to demonstrate before the Tax Court that the lien amount was accurate, and (4) failing to preclude the Commissioner from presenting evidence where counsel for the Commissioner removed certain documents from the record. We assume the parties' familiarity with the facts and procedural history of the case.

We review the Tax Court's conclusions of law *de novo*, its application of its procedural rules for abuse of discretion, *see Sunik v. Comm'r*, 321 F.3d 335, 337 (2d Cir.2003), and its factual findings for clear error, *see Merrill Lynch & Co., Inc. v. Comm'r*, 386 F.3d 464, 469 (2d Cir.2004). *See also* 26 U.S.C. § 7482(a)(1) ("The United States Courts of Appeals . . . shall . . . review the decisions of the Tax Court . . . in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury. . . .").

We find each of petitioners' claims to be without merit. We agree with the Tax Court's conclusion that the IRS appeals officer did not abuse his discretion in sustaining the filing of notice of a federal tax lien against petitioners. *See Davis v. Comm'r*, 115 T.C. 35, 39, 2000 WL 1048515 (2000) ("Where . . . the underlying liability

is not in issue, the Court will review the Commissioner's administrative determination for abuse of discretion."). Moreover, petitioners have failed to call to this Court's attention any evidence from the record or any legal authorities-and we have found none-indicating that the Tax Court abused its discretion in making any of the evidentiary rulings at issue.

For the foregoing reasons, the judgment of the Tax Court is AFFIRMED.

FOR THE COURT,
Catherine O'Hagan Wolfe, Clerk of Court

By s/ [illegible]

APPENDIX B — DECISION OF THE UNITED STATES TAX COURT FILED JUNE 21, 2007

T.C. Memo. 2007-162

UNITED STATES TAX COURT

OLIVER W. AND HARRIET S. WILLIAMS, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 3000-06L. Filed June 21, 2007.

Oliver W. Williams, pro se.

Girard Mackey, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

HAINES, *Judge*: Petitioners filed a petition with this Court in response to a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 (notice of determination) for 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002 (years at issue).[1] Pursuant to section 6330(d), petitioners seek review of respondent's determination. The issues for decision are: (1) Whether petitioners have a right to a judicial review of respondent's notice of determination sustaining a Federal tax lien which covers the same tax year as a

1. Unless otherwise indicated, all section references are to Internal Revenue Code, as amended. Amounts are founded to nearest dollar.

previous Federal tax lien (in which petitioners failed to request an administrative hearing) but concerns a different type of unpaid tax for that year and (2) whether petitioners are entitled to any relief from respondent's determination that collection may proceed.

FINDINGS OF FACT

A. *Background*

Some of the facts have been stipulated and are so found. The stipulation of facts and exhibits are incorporated herein by this reference. Petitioners resided in Ossining, New York, when they filed this petition. Petitioners are Oliver W. Williams, an attorney, and his wife, Harriet S. Williams, a psychologist. Petitioners failed to pay Federal income tax liabilities shown on their returns for the years at issue.

B. *Petitioners' Installment Agreement*

In June 1997, petitioners and respondent entered into an installment agreement in which petitioners agreed to pay their 1995 income tax liability. Respondent's certificate of official record for 1995 (1995 record) indicated petitioners were credited with making 22 monthly payments of $375 from June 23, 1997, through March 24, 1999, a $375 payment on June 29, 1999, 6 monthly payments of $340 from June 2, 2000 through November 22, 2000, and a $340 payment on February 20, 2001, pursuant to the installment agreement. Petitioners did not fulfill the terms of the

installment agreement, and an income tax liability for 1995 remains unpaid.[2]

C. *Notice of Federal Tax Lien Filing of May 9, 2003*

On June 19, 2001, petitioners filed with their 1993 income tax return Form 5329, Additional Taxes Attributable to IRAs, other Qualified Retirement Plans, Annuities, Modified Endowment Contracts, and MSAs. Petitioners failed to pay the 10-percent additional tax on the early distribution as required under section 72(t). On October 15, 2001, respondent assessed the 10-percent additional tax liability including penalties and interest for 1998.[3] On May 6, 2003, respondent filed a notice of Federal tax lien with respect to the 10-percent additional tax liability and on May 9, 2003, mailed petitioners a Notice of Federal Tax Lien Filing and Notice of Your Right to a Hearing Under IRC 6320 (first notice of Federal tax lien). The first notice of Federal tax lien indicated the "Type of Tax" was Form 5329 and the balance owing was $6,592. The U.S. Postal Service returned the first notice of Federal tax lien to respondent unclaimed. Petitioners did not submit to respondent a request for an administrative hearing with respect to the first notice of Federal tax lien. Respondent's

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2. The 1995 record also indicated that on May 1, 2000, an overpayment credit of $175 from 1994 was applied to petitioners 1995 tax liability.

3. Respondent did not explain why the 10-percent additional tax was assessed separately from the rest of the tax shown on the return.

certificate of official record for 1998 (1998 record) indicated that on April 4, 2005, an overpayment credit of $4,664 from petitioners' 2004 tax year was applied to the balance owing in 1998; i.e., the 10-percent additional tax liability.[4] The balance owing as indicated on the first notice of Federal tax lien was not reduced to reflect the $4,664 overpayment credit.

D. *Offer-in-Compromise*

On July 26, 2004, respondent received from petitioners a Form 656, Offer-in-Compromise, offering $2,500 to compromise their outstanding tax liabilities for the years at issue with Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals. Petitioners failed to provide documentation verifying the monthly expenses claimed on Form 433.

A. Pursuant to petitioners' requests, respondent, on several occasions, extended the time to submit the substantiating documentation. On April 20, 2005, respondent notified petitioners that if they failed to provide the requested documentation by April 30, 2005, the offer-in-compromise would be rejected. Petitioners

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4. Respondent produced two certificates of official record for 1998. One record pertains to the Form 5329 10-percent additional tax liability and the other record pertains to petitioners' underpayment of the individual income tax for 1998 other than the 10-percent additional tax. For purpose of this case the term "1998 record" refers to the Form 5329 10-percent additional tax liability.

failed to provide the documentation by April 30, 2005, and respondent returned petitioners' offer-in-compromise for failure to provide verification of claimed expenses.[5]

B. *Notice of Federal Tax Lien Filing for May 13, 2005*

Petitioners failed to pay their income tax liabilities for the years at issue after respondent gave notice and demanded payment. On May 12, 2005, respondent filed a notice of Federal tax lien with respect to the years at issue and on May 13, 2005, mailed petitioners a notice of Federal Tax Lien Filing and Notice of Your Right to a Hearing Under IRC 6320 (second notice of Federal tax lien).[6] The second notice of Federal tax lien indicated the "Type of Tax" owing was Form 1040, U.S. Individual Income Tax Return, and listed unpaid balances of $5,713, $15,092, $19,024, $37,485, $21,294, $13,124, $16,990, and $12,580 for 1995, 1996, 1997, 1998,[7] 1999, 2000, 2001, and 2002, respectively.

E. *Administrative Hearing*

On May 23, 2005, petitioners submitted Form 12153, Request for a Collection Due Process Hearing, in which

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5. The Form 656 was returned on May 25, 2005.

6. Though the second notice in point of time, it was the first notice as to all years except 1998.

7. The unpaid balance for 1998 as indicated on the second notice of Federal tax lien did not include the balance owing in the first notice of Federal tax lien

they claimed the second notice of Federal tax lien should not have been filed because of representations made by respondent's revenue officer that a lien would not be filed while they were negotiating an offer-in-compromise.

On June 24, 2005, petitioners mailed a letter to respondent, in which they asserted that the tax liability indicated in the second notice of Federal tax lien failed to reflect the $4,664 overpayment credit from 2004.[8] On July 21, 2003, respondent's Appeals Office mailed petitioners a letter acknowledging receipt of petitioners' request for an administrative hearing.

On October 27, 2005, a face-to-face conference was held between Settlement Officer Thomas Knauss and Oliver W. Williams (petitioner). During the hearing, petitioner asserted that the offer-in-compromise should not have been returned because he provided all requested documentation, and second notice of Federal tax lien was prematurely filed because petitioners were negotiating an offer-in-compromise, and the second notice of Federal tax lien did not reflect that the 2004 overpayment credit of $4,664 was applied to reduce the balance owing.

In response, Mr. Knauss informed petitioner that he could not reinstate a returned offer-in-compromise, an offer-in-compromise does not prohibit the filing of a notice of Federal tax lien, and the amount shown on a

8. The $4,664 overpayment credit was applied to the 1998 Form 5319 10-percent additional tax liability reflected in the first notice of Federal tax lien.

notice of Federal tax lien is not reduced when a taxpayer makes a subsequent payment.

At the hearing, petitioner proposed an offer-in-compromise or an installment agreement as a collection alternative. Mr. Knauss and petitioner agreed that petitioners would provide a completed Form 433-A to Mr. Knauss by November 28, 2005, so that Mr. Knauss could determine which collection alternative would suit petitioners' financial situation.

On November 23, 2005, petitioners faxed a letter to Mr. Knauss requesting an extension until December 15, 2005, to provide the completed Form 433-A. Petitioners failed to provide the Form 433-A by December 15, 2005 or anytime thereafter.

On January 12, 2006, respondent's Appeals Office issued petitioners a notice of determination sustaining the filing of the second notice of Federal tax lien and finding:

> The taxpayers have been given multiple opportunities to resolve these liabilities via less intrusive means but have failed to do so in a timely manner. The filing of the NFTL is the only means of securing the government's interest in the taxpayers' property and potentially collecting the unpaid liability.

In response to the notice of determination, petitioners timely filed their petition with this Court on February 9, 2006.

Appendix B

OPINION

I. *Notices of Federal Tax Lien*

The record indicates there were two separate notices of Federal tax lien filed with respect to income tax liabilities in 1998. The first notice of Federal tax lien was filed with respect to the 1998 Form 5329 10-percent additional tax liability, and the second notice of Federal tax lien was filed with respect to the income tax liability for 1998 other than the 10-percent additional tax. The second notice of Federal tax lien did not include the 1998 Form 5329 10-percent additional income tax liability.

Petitioners concede this Court lacks jurisdiction over the unpaid 1998 10-percent additional tax liability because they did not timely submit a request for an administrative hearing with respect to the first notice of Federal tax lien. See occ. 6320(b) (1); *Orum v. Commissioner*, 123 T.C. 1, 7-8 (2004), affd. 412 F. 2d 819 (7th Cir. 2005).

Petitioners timely submitted a request for an administrative hearing with respect to the second notice of Federal tax lien. See sec. 6320(b) (1). Although the first and second notices of Federal tax lien include a 1998 income tax liability, they cover different types of unpaid taxes. See sec. 6320(b) (2); sec. 301.6320-1(b) (1), Proceed. & Admin. Regs. Therefore, this Court has jurisdiction to review respondent's notice of determination with respect to 1998 unpaid tax (and the other years at issue) in the second notice of Federal tax lien.

Appendix B

II. *Standard of Review*

Where the validity of the underlying tax liability is property at issue, the Court will review the matter de novo. *Sego v. Commissioner*, M4 T.C. 604, 610 (2000); *Goza v. commissioner*, 114 T.C. 176, 181 (2000).[9] The underlying tax liability is properly at issue if the taxpayer did not receive a statutory notice of deficiency or otherwise have an opportunity to dispute the tax liability. Sec. 6330(c) (2) (B); see *Behling v. Commissioner*, 118 T.C. 572, 576-577 (2002).

Where the validity of the underlying tax liability is not properly at issue. The Court will review the Commissioner's determination for abuse of discretion. *Sego v. Commissioner*, *supra* at 610; *Goza v. Commissioner*, *supra* at 181. The abuse of discretion standard requires the Court to decide whether the Commissioner's determination was arbitrary, capricious, or without sound basis in fact or law. *Woodral v. Commissioner*, 112 because they were negotiating an offer-in-compromise when the lien was filed.

The Federal Government obtains a lien against "all property and rights to property, whether real or personal" of any person liable for Federal taxes upon demand for payment and failure to pay. Sec. 6321;

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9. The term "underlying tax liability" under sec. 6330(c) (2) (B) includes amounts self-assessed under sec. 6201(a), together with penalties and interest. Sec. 6201 (a) (1); *Montgomery v. Commissioner*, 122 T.C. 1, 9 (2004); sec. 301. 6201-1, Proceed. & Admin. Regs.

Iannone v. Commissioner, 122 T.C. 287, 293 (2004). The lien arises automatically on the date of assessment and continues until the tax liability is satisfied or the statute of limitations bars enforcement. Sec. 6322; *Iannone v. Commissioner*, *supra* at 293. The notice of Federal tax lien is filled with the appropriate State office or other government office in order to validate the lien against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor. See sec. 6323(a); *Lindsay v. Commissioner*, T.C. Memo. 2001-205, effd. 56 Fed. Appx. 800 (9th Cir. 2003).

The notice of Federal tax lien was not filed prematurely. Petitioners self-assessed income tax liabilities for the years at issue. Petitioners were given notice and demand for payment for each year at issue. The second notice of federal tax lien was filed on May 12 and mailed to petitioners on May 13, 2005. Filing of the Federal tax lien took place after assessment and notice and demand for payment and at each step petitioners were properly notified. The record also indicated that petitioners' offer-in-compromise was returned before the second notice of T.C. 19, 23 (1999); *Keller v. Commissioner*, T.C. Memo. 2006-166; *Fowler v. Commissioner*, T.C. Memo. 2004-163.

III. *Payments*

Petitioners contend the tax liabilities listed in the second notice of Federal tax lien did not reflect the installment agreement payments and the 2004

overpayment credit.[10] Because the validity of the underlying tax liabilities is properly at issue, the Court reviews respondent's determinations de novo. See *Landry v. Commissioner*, 116 T.C. 60, 62 (2001).

The 1995 record indicated petitioners were credited with making 23 payments of $375 and 7 payments of $340 pursuant to their installment agreement. The 1995 record reflected all payments received by respondent for petitioners' income tax liability. The balance that remained is consistent with the amount respondent is attempting to collect as stated in the second notice of Federal tax lien for 1995. Therefore, the Court finds that the second notice of Federal tax lien properly reflected the installment agreement payments.

IV. Withdrawal of Notice of Federal Tax Lie

Petitioners also contend that respondent abused his discretion IN sustaining the second notice of Federal tax lien was issued. Consequently, petitioners were not negotiating an offer at the time the lien was filed.

The Commissioner "may" withdraw a Federal tax lien pursuant to section 6323 (j) (1), but respondent's failure to do so in this case is not an abuse of discretion. See *Crisan v. Commissioner*, T.C. Memo. 2007-67; *Ramirez v. Commissioner*, T.C. Memo. 2005-179; *Stein v. Commissioner*, T.C. Memo. 2004-124.

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10. The 1998 record indicated that the 2004 overpayment credit of $4,664 was applied to the Form 5329 10-percent additional tax liability recorded in the first notice of tax lien.

For the foregoing reasons, this Court finds respondent did not abuse his discretion in sustaining the filing of the second notice of Federal tax lien, and respondent may proceed with collections.

In reaching these holdings, the Court has considered all arguments made and, to the extent not mentioned, concludes that they are moot, irrelevant, or without merit.

To reflect the foregoing,

Decision will be

Entered for respondent

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DENYING PETITION FOR REHEARING DATED JANUARY 26, 2009

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated Term of the United State Court of Appeals for the Second circuit, held at the Daniel Patrick Moynihan United states Courthouse, 500 Pearl Street, in the City of New York, on the 26th day of January, two thousand and nine,

Before: Hon. Jose A. Cabranes,
Hon. Peter W. Hall,
Circuit Judges.
Hon. John Gleeson,*

Docket Number: 07-4173-ag

Oliver W. Williams, Harriet S. Williams,

Petitioners.

v.

Commissioner of Internal Revenue,

Respondent.

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* The Honorable John Gleeson, of the United States District Court for the Eastern District of New York, sitting by designation.

Appendix C

ORDERED

Oliver W. and Harriet S. Williams having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is denied.

For the Court:

Catherine O'Hagan Wolfe, Clerk

By: __//_____

Frank Perez, Deputy Clerk